

United States District Court

MIDDLE

DISTRICT OF

ALABAMA

In the matter of the Search of

(Name, address or brief description of person, property or premises to be searched)

**APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT**

CASE NUMBER: *3:07-mj-22-CSC*

CPU Tower - Server, Dark Grey/White in Color, unknown make and serial number, seized from 116 Cox Street (Walker Apartments), Apartment 27, Auburn, AL 36832

I, Blake Diamond being duly sworn depose and say:

I am a(n) US Immigration & Customs Enforcement Agent and have reason to believe that on the person of or on the property or premises known as (name, description and/or location)

CPU Tower - Server, Dark Grey/White in Color, unknown make and serial number, seized from 116 Cox Street (Walker Apartments), Apartment 27, Auburn, AL 36832

in the Middle District of Alabama there is now concealed a certain person or property, namely (describe the person or property to be seized)

computer files, images, emails, photographs, and all other data concerning the acquisition of and/or distribution of controlled substances,

which are **contraband, evidence of a crime, fruits of a crime, or things otherwise criminally possessed, concerning violations of Title 21 United States Code, Sections 841(a)(1).**

The facts to support the issuance of a Search Warrant are as follows:

SEE ATTACHED AFFIDAVIT WHICH IS INCORPORATED BY REFERENCE HEREIN

Continued on the attached sheet and made a part hereof: Yes No

Signature of Affiant

Sworn to before me and subscribed in my presence,

January 16, 2007

at Montgomery, Alabama

Date

City and State

Charles S. Coody, U.S. Magistrate Judge

Name and Title of Judicial Officer

AFFIDAVIT

I, Blake Diamond do solemnly depose and state the following:

(1) I am a Special Agent with the United States Department of Homeland Security - Immigration and Customs Enforcement and have been so employed for the past 10 years. As such, I am responsible for investigating Federal Offenses involving the smuggling of goods into the United States and the possessing and distributing of controlled substances in violation of Title 18, United States Code, Section 545 and Title 21, United States Code, Section 841(a)(1).

(2) This affidavit is being made in support of a search warrant for computer hardware and software seized from 116 Cox Street (Walker Apartments), Apartment 27, Auburn, Alabama 36832, the residence of Jon Robert GARR pursuant to a search warrant issued by the Circuit Court of Lee County, Alabama on June 20, 2006 in connection with an attempted controlled delivery of approximately 1,019 Ecstasy pills to two Post Office Boxes in Auburn, Alabama. The factual information contained in this application and affidavit is based upon my investigation and upon information provided to me orally and in written form by Jon Robert GARR. Because this affidavit is being submitted for the purpose of securing a search warrant, it does not contain all the information from the investigation, but only those facts deemed necessary to establish probable cause for the requested search warrant.

(3) I have probable cause to believe that evidence of a violation of smuggling goods into the United States in violation of Title 18, United States Code, Section 545 and possessing and distributing a controlled substance in violation of Title 21, United States Code, Section 841(a)(1), is located on and within (1) Apple Mac Book Pro Laptop Computer SN# W86204BJTHY; 2) 3Com Superstack II SN# 0101/7B1V1661C38; and 3) CPU Tower - Server, Dark Grey/White in Color, unknown make and serial number, taken from 116 Cox Street (Walker Apartments), Apartment 27, Auburn, Alabama 36832, the residence of Jon Robert GARR, pursuant to consent from the owner and a valid search warrant issued by the Circuit Court of Lee County, Alabama.

(4) The following words and definitions are pertinent to this investigation:

Smuggling Goods Into the United States - is defined as pursuant to Title 18, United States Code, Section 545, as whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law.

Computer - is defined as pursuant to Title 18, United States Code, Section 1030(e)(1), as an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device.

Computer hardware - consists of all equipment that can receive, capture, collect, analyze, create, display, convert, store, conceal, or transmit electronic, magnetic, or similar computer impulses or data. Computer hardware includes any data-processing devices (including, but not limited to, central processing units, internal and peripheral storage devices; peripheral input/output devices, as well as any devices, mechanisms, or parts that can be used to restrict access to computer hardware.

Computer software - consists of digital information that can be interpreted by a computer and any of its related components to direct the way they work. Computer software is stored in electronic, magnetic, or other digital form. It commonly includes programs to run operating systems, applications and utilities.

Computer server - is a computer system that serves as a central repository of data and software programs shared by other computers in a network. It's a computer system that operates continuously and waits for requests for services from other computers on the network. Other computers are directly connected to a computer server by the use of network cables. This computer system is serves the whole network that it's connected to in any form, whether by queueing up printing jobs from several computers, to acting as a file server for applications that online terminals could access. It can also be used to connect multiple computers to the internet. Depending on internal hardware installation, servers could also contain hard drives capable of storing information and data from multiple computers.

(5) Probable cause for purposes of a search warrant means a fair probability that contraband or evidence of a crime will be found in a particular place, given the circumstances set forth in the affidavit.

(6) Because of the technical expertise required to conduct a forensic analysis of computer hardware and software, and the time consuming nature of a forensic computer examination, the examination of the computer hardware and software will need to be completed in a controlled environment at an offsite location.

LOCAL INVESTIGATION BACKGROUND

(7) On June 14, 2006, Customs and Border Protection (CBP) Inspectors in Seattle, Washington seized a package of Ecstasy pills. The package was being shipped from an address in Vancouver, British Columbia, Canada and was destined for a P.O. Box address in Auburn, Alabama. A field test of the pills using a NIK Test Kit gave a positive response for Ecstasy. A count revealed approximately 340 pills that were located inside clear cellophane wrapping which was placed inside a sneaker. The pills were pink in color and had an impression of a dolphin stamped on one side.

The information for Package #1 is as follows:

Sender - John Wong
2817 E 23rd Avenue
Vancouver, British Columbia, Canada V5M2X9

Addressee - Baron M
P.O. Box 1891
Auburn, Alabama 36831-1891

Itemized List of Contents - Shoes valued as \$9.00
USPS DELIVERY CONFIRMATION# CE 407 078 915 CA
Contained approximately 340 Ecstasy pills

On June 15, 2006, CBP Inspectors in Seattle, Washington intercepted two (2) more international mail packages from Vancouver, British Columbia that were destined for Auburn, Alabama. A search of the packages revealed one sneaker wrapped in newspaper. Inside each sneaker was a cellophane package that contained Ecstasy pills. A field test of the pills using a NIK Test Kit gave a positive response for Ecstasy.

The information for Package #2 is as follows:

Sender - Ryan Lau
3329 East 31st Avenue
Vancouver, British Columbia, Canada V5M2X6

Addressee - Baron M.
P.O. Box 1891
Auburn, Alabama 36831-1891

Itemized List of Contents - Shoes values at \$9.00
USPS DELIVERY CONFIRMATION# CE 400 791 384 CA
Contained approximately 330 Ecstasy pills
The information for Package #3 is as follows:

Sender - Ryan Nga
2756 East 23rd Avenue
Vancouver, British Columbia, Canada V5M2X8

Addressee - John G.
P.O. Box 513
Auburn, Alabama 36831

Itemized List of Contents - Shoes valued at \$9.00
USPS DELIVERY CONFIRMATION# CE 143 866 577 CA
Contained approximately 349 Ecstasy pills

On June 20, 2006, ICE agents along with U.S. Postal Inspectors, Alabama Bureau of Investigation Agents, Auburn Police Officers, and Opelika Police Officers conducted a controlled delivery of the three packages of Ecstasy pills at the U.S. Post Office located at 300 Opelika Road in Auburn, Alabama.

At approximately 9:15am, Postal Inspector Jim Tynan placed a PS Form 3849 Delivery Notice/Reminder/Receipt inside P.O. Box 513 and 1891. It was at that time Inspector Tynan observed another delivery notice inside P.O. Box 1891. Inspector Tynan discovered another package that had been previously delivered to the Post Office, which was addressed to Baron M. at P.O. Box 1891. The package appeared to be from Serbia and the contents were unknown.

At approximately 9:40am, ICE agents observed Jon Robert GARR as he arrived at the Post Office driving a silver 2002 Hyundai Elantra bearing Alabama License Plate 47B196R.

GARR exited the vehicle and entered the Post Office through the side entrance. GARR then opened both P.O. Box 513 and 1891 and retrieved the items located inside.

GARR then proceeded to the main service desk inside the Post Office. GARR presented the PS Form 3849 addressed to Jon G. for P.O. Box 513 to a postal employee. GARR was instructed to walk around to the side door to receive his package.

GARR walked to the side door where Inspector Tynan, who was posing as a postal employee, met him. Inspector Tynan had GARR sign the PS Form 3849. Inspector Tynan handed the package to GARR who then exited the Post Office through the main entrance.

GARR proceeded to walk to his vehicle where Auburn Police Officers met him. GARR was found to be in possession of the package given to him by Inspector Tynan along with the two delivery notifications for Baron M. at P.O. Box 1891. GARR was also found to be in possession of both keys that fit P.O. Box 513 and 1891. GARR was taken into custody and transported to the Auburn Police Department for further questioning. The package and vehicle were also taken to the Auburn Police Department.

Upon questioning, GARR freely and voluntarily admitted that the package contained Ecstasy. GARR was given his Miranda Warning at which time he waived his right to counsel and agreed to speak to ICE agents without the presence of an attorney.

Upon further questioning, GARR gave a verbal and written statement. GARR admitted that he ordered the Ecstasy pills from an unknown person on the internet. GARR claimed that he ordered Ecstasy and had it sent to both his P.O. Box 513 and Baron Montgomery MITCHELL'S P.O. Box 1891. GARR claimed that MITCHELL had no knowledge of these shipments and was not involved in the purchase of drugs. GARR claimed that MITCHELL let him borrow his P.O. Box in order to receive mail. GARR also admitted that he had received eight or nine previous packages of drugs that contained Ecstasy, Xanax and Valium. GARR stated that he ordered all of these drugs on the internet from unknown people in Serbia, Montenegro, and Canada. He claimed that he used an "E-Gold" account online to purchase the drugs. GARR admitted that he used a "GMAIL" account to communicate with these individuals. He provided us with his "GMAIL" account name of readerror67@gmail.com and his password. GARR also admitted that two more packages of Diazepam (Valium) had been ordered and were to be delivered to either P.O. Box 513 or 1891 in the near future. The packages were being shipped from Serbia. GARR also admitted that the package found by Inspector Tynan at the Post Office for Baron M. was a shipment of Xanax from Serbia.

GARR gave ICE agents consent to search his vehicle and apartment located at 116 Cox Street, Apartment 27 in Auburn, Alabama 36832.

Upon further questioning, GARR admitted that he was in possession of a small amount of Marijuana at his apartment. He also stated that the Apple laptop computer he used to conduct the online drug transactions was located inside the apartment. GARR gave ICE agents consent to search his apartment located at 116 Cox Street (Walker Apartments), Apartment 27, Auburn, Alabama 36832. While GARR consented to the search of his vehicle and apartment, he refused to give consent to search the contents of his computers.

Based on the aforementioned facts, Auburn Police Officers obtained a state search warrant for 116 Cox Street, Apartment 27 in Auburn, Alabama 36832.

A search of GARR's apartment resulted in the Auburn Police Department seizing the following items:

Apple Mac Book Pro Laptop Computer SN# W86204BJTHY, Dell Inspiron 8200 Laptop Computer SN# CN04T17629612A45879, Apple Mac Power Book G4 Laptop Computer SN# UV3240Z2MRT, Maxtor Hard Drive SN# K60BLCTC, 3Com Superstack II SN# 0101/7B1V1661C38, CPU Tower - Server Dark Grey/White in Color unknown make and serial number, numerous containers of Marijuana, approximately \$1,000 in U.S. Currency, 2 digital cameras and one 35mm camera, digital scales, marijuana grinders, additional Ecstasy pills, numerous drug paraphernalia, photos of packages GARR sent to numerous people throughout the United States, and several other drug related items.

The CPU Tower, which is a computer server dark grey/white in color with an unknown make and serial number, was located on the floor of the downstairs room. It had a network cable running to the upstairs bedroom where the other remaining computer systems were located, including the Apple Mac Book Pro Laptop Computer SN# W86204BJTHY and the 3Com Superstack II SN# 0101/7B1V1661C38. Both were connected to the CPU Tower located downstairs by a network cable.

All of the seized items were taken into custody and placed into evidence by the Auburn, Alabama Police Department.

(8) Please see affidavit of Detective Scott Kendall, Investigator for the Auburn, Alabama Police Department, attached as Exhibit 1.

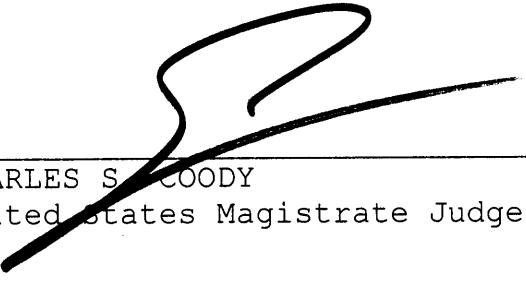
CONCLUSION

Based on the foregoing, affiant has probable cause to believe that evidence of a violation of Title 18, United States Code, Section 545 - smuggling goods into the United States and a violation of Title 21, United States Code, Section 841(a)(1) - possessing and distributing a controlled substance, is located on and within: (1) Apple Mac Book Pro Laptop Computer SN# W86204BJTHY; 2) 3Com Superstack II SN# 0101/7B1V1661C38; and 3) CPU Tower - Server, Dark Grey/White in Color, unknown make and serial number, taken from 116 Cox Street (Walker Apartments), Apartment 27, Auburn, Alabama 36832, the residence of Jon Robert GARR, pursuant to consent from the owner and a valid search warrant issued by the Circuit Court of Lee County, Alabama.



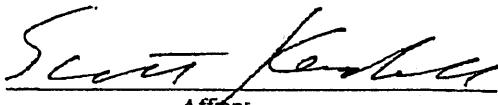
Blake Diamond
Senior Special Agent
U.S. Immigration and Customs Enforcement

Sworn to and subscribed
before me this 16th day
of January, 2007.



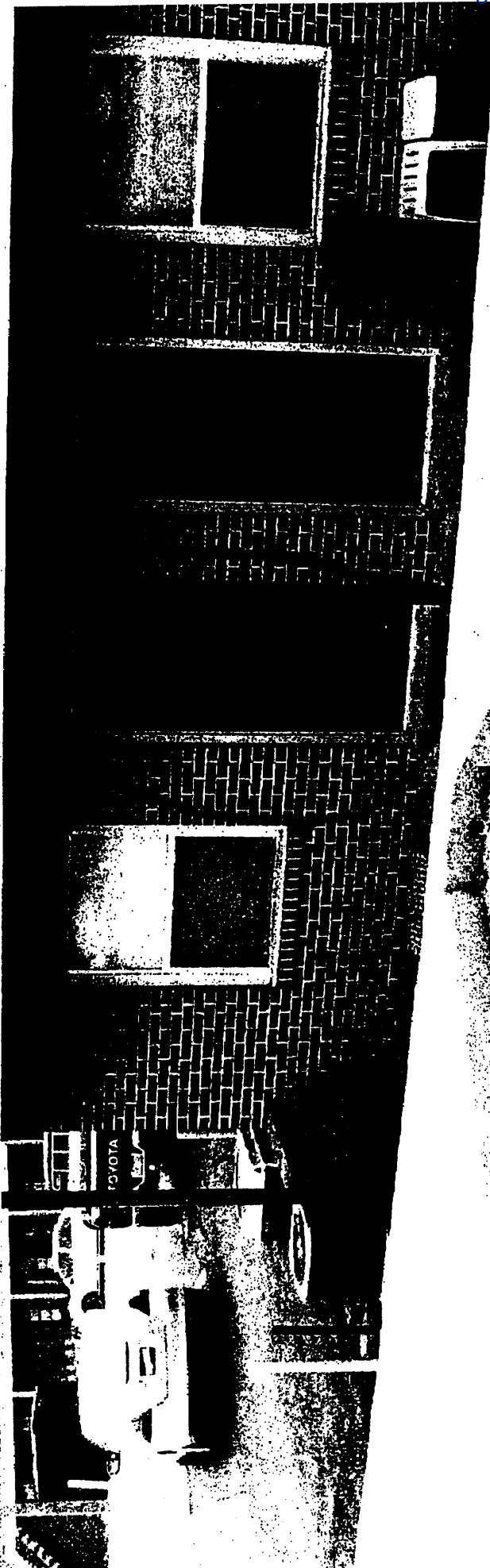
CHARLES S. COODY
United States Magistrate Judge

COPY

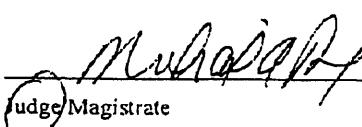
State of Alabama Unified Judicial System Form CR-I-a Rev. 2/95		AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT	Case or Warrant Number
IN THE <u>Circuit</u> COURT OF <u>Auburn</u> , ALABAMA (Circuit, District, Municipal) (Name of County or Municipality)			
<input checked="" type="checkbox"/> STATE OF ALABAMA <input type="checkbox"/> MUNICIPALITY OF <u>State of Alabama</u> v. <u>Jon Robert Garr, Alias</u> Defendant			
<p>After an Application for a Search Warrant was made or will be made to the court, I, <u>Detective Scott Kendall</u>, the undersigned, after being duly sworn to tell the truth and in support of the Application, hereby depose and say as follows: That I, Detective Scott Kendall, of the Auburn Police Department had, within the past 72 hours, made contact with Jon Robert Garr, alias. Garr was contacted, as a suspect in a Trafficking of a Controlled Substance case, at the United States Post Office at 300 Opelika Road Auburn, Lee County, Alabama. This case was a joint venture between the Auburn Police Department's narcotics unit and the U.S. Immigration and Customs Enforcement Agency. A package was intercepted by Custom's officers and found to contain a quantity of MDMA (ecstasy) tablets. Officers with the Auburn Police Department, U.S. Immigration and Customs, Opelika Police Department and Alabama Bureau of Investigation participated in a controlled delivery of the tablets to a post office box in the name of Jon Robert Garr. Garr arrived at the U.S. Post Office and took possession of the box containing the items. Garr was contacted, in the parking lot, and was transported to the Auburn Police Department for further investigation. While talking with Garr he admitted to possessing a quantity of illegal drugs, to include an amount of marijuana, at his residence at 116 Cox St. #27 Auburn, Lee County, Alabama. Garr also advised he had used his laptop computer, located at his residence, to make illegal narcotics transactions online. This computer was used in several online purchases of narcotics to include purchase of the aforementioned MDMA tablets. Garr advised there may be other information, to include e-mails, pertaining to the purchase of tablets as well as other purchases of illegal narcotics from around the world. Garr advised several more shipments of illegal narcotics should be arriving at the post office within the next few days. E-mails obtained with Garr's consent indicate he has purchased large quantities of illegal narcotics, online, over the period of the last several months.</p>			
 Affiant			
Sworn to and subscribed before me on this the <u>27</u> day of <u>June</u> <u>2006</u> <u>Magistrate AP</u> Judge/Magistrate			

COPY

State of Alabama Unified Judicial System Form CR-1	APPLICATION FOR SEARCH WARRANT	Case or Warrant Number
Rev. 4/99		
IN THE <u>Circuit</u> (Circuit, District, Municipal)		COURT OF <u>Lee County</u> , ALABAMA (Name of County or Municipality)
<input checked="" type="checkbox"/> STATE OF ALABAMA <input type="checkbox"/> MUNICIPALITY OF <u>State of Alabama</u>		v. <u>Jon Robert Garr, alias</u> Defendant
<p>I, Scott Kendall, the undersigned, hereby make application for the issuance of a search warrant as I have probable cause to believe and do believe that the following personal property, to-wit: Marijuana, Ecstasy, its derivative, drug paraphernalia, computers and other electronic devices, used in the online purchase of illegal narcotics and any other controlled substances in violation of the Alabama Uniform Controlled Substances Act, are located or concealed in or upon the residence located at 116 Cox St #27, Walker Apartments Auburn, Lee County, Alabama. 116 Cox St #27 Walker Apartments Auburn, Lee County, Alabama is a two story apartment complex located on the east side of Cox Street and South of Genelda Avenue. This apartment and its complex has a brick lower section with a white wood sided upper section and a single window, trimmed in white, on the lower side of the apartment and to the left of the front door as you face the residence. The apartment numbers, 27, are clearly marked on the front door as you face the residence (See attached picture).</p> <p>and that the property (Check appropriate ground(s)):</p> <p><input type="checkbox"/> was, or is expected to be, unlawfully obtained;</p> <p><input type="checkbox"/> was, or is expected to be, used as the means of committing or attempting to commit an offense contrary to the laws of the State of Alabama or political subdivision thereof, to wit:</p> <p><input type="checkbox"/> is, or is expected to be, in the possession of another with intent to use it as a means of committing a criminal offense, or is, or is expected to be, in the possession of another to whom it was delivered for the purpose of concealing it or preventing its discovery;</p> <p><input checked="" type="checkbox"/> constitutes, or is expected to constitute, evidence of a criminal offense under the laws of the State of Alabama or a political subdivision thereof, to-wit: Possession of a Controlled Substance 13A-12-212</p> <p>Applicant states that his (her) request is based upon the facts stated in the affidavit(s) attached hereto.</p> <p><u>6-20-06</u> Date</p> <p><u>Scott Kendall</u> Applicant</p>		



COPY

State of Alabama Unified Judicial System Form CR-1-b	SEARCH WARRANT	Case or Warrant Number
IN THE <u>Circuit</u> COURT OF <u>Lee County</u> , ALABAMA (Circuit, District, Municipal) (Name of County or Municipality)		
<input checked="" type="checkbox"/> STATE OF ALABAMA <input type="checkbox"/> MUNICIPALITY OF <u>State of Alabama</u> v. <u>Jon Robert Garr, alias</u> <u>Defendant</u>		
TO ANY LAW ENFORCEMENT OFFICER AUTHORIZED TO EXECUTE THIS WARRANT:		
<p>On this day, <u>Detective Scott Kendall</u>, proved that he (she) has (Name) probable cause to believe and does believe that Marijuana, Ecstasy, its derivative, drug paraphernalia, computers and other electronic devices, used in the online purchase of illegal narcotics and any other controlled substances in violation of the Alabama Uniform Controlled Substances Act, are located or concealed in or upon the residence located at 116 Cox St #27, Walker Apartments Auburn, Lee County, Alabama is a two story apartment complex located on the east side of Cox Street and South of Genelda Avenue. This apartment and its complex has a brick lower section with a white wood sided upper section and a single window, trimmed in white, on the lower side of the apartment and to the left of the front door as you face the residence. The apartment numbers, 27, are clearly marked on the front door as you face the residence.</p>		
The property (Check appropriate ground(s)):		
<input type="checkbox"/> was, or is expected to be, unlawfully obtained; <input type="checkbox"/> was, or is expected to be, used as the means of committing or attempting to commit an offense contrary to the laws of the State of Alabama or political subdivision thereof, to wit: <input type="checkbox"/> is, or is expected to be, in the possession of another with intent to use it as a means of committing a criminal offense, or is, or is expected to be, in the possession of another to whom it was delivered for the purpose of concealing it or preventing its discovery; <input checked="" type="checkbox"/> constitutes, or is expected to constitute, evidence of a criminal offense under the laws of the State of Alabama or a political subdivision thereof, to-wit: Unlawful Possession of a Controlled Substance 13A-12-212		
<p>NOW, THEREFORE, by virtue of the authority given to be by Rule 3, Alabama Rules of Criminal Procedure (Ala.R.Crim.P.), you are hereby commanded to make a search of the above-described person or premises <input type="checkbox"/> IN THE DAYTIME <input checked="" type="checkbox"/> AT ANYTIME OF THE DAY OR NIGHT and within <u>10</u> days (not to exceed 10 days) in <u>Auburn</u>, Alabama, for the above-described personal property and to maintain due return of this Warrant, along with an inventory of any property seized, to the undersigned as required by Rule 3, Ala.R.Crim.P.</p>		
ISSUED to <u>Detective Scott Kendall</u> at <u>2</u> o'clock <u>P.</u> M. on this the <u>20</u> day of <u>June</u> , 2006.		
 Judge Magistrate		

COPY

*ATTACHMENT #1

SEARCH WARRANT RETURN

COPY

Jon Robert Garr, alias
 116 Cox St. Apt #27
 Auburn, Alabama 36830

DATE: Tuesday, June 20, 2006
 CASE #: NA

ITEM #	DESCRIPTION and LOCATION	OFFICER
1	On Garr's computer table-two clear bags containing marijuana. Two metal grinders containing marijuana. Several smoking pipes with marijuana residue inside. One brown pill bottle containing marijuana. One tin can containing razor blades. One electronic digital scale. One clear bag containing two blue pills located under the computer table on the floor.	Sanford at 1512 hrs.
2	One clear bag of suspected poppy plants and seeds. Recovered from Garr's bedroom closet.	Sanford at 1518 hrs.
3	One addressed manila envelope with a paper box inside containing a liquid filled syringe. Recovered from Garr's bedroom closet.	Sanford at 1519 hrs.
4	One ASICS shoe box containing metal weigh scales and smoking pipe w marijuana residue inside located under Garr's Bed	Sanford at 1525 hrs.
5	Located in Garr's bedroom dresser drawer- one clear bag containing 1000 dollars in U.S. Currency. One Sony camera with pictures of drug activity. A receipt for \$855.00 thru Western Union from Serbia & Montenegro. 2 box of sandwich bags. One jump drive memory card.	Sanford at 1530 hrs.
6	One MacBook Pro laptop computer SN: #W86204BJTHY One Dell Inspiron 8200 laptop computer SN: #CN04T176129612A45879 One Mac Power book G4 Laptop computer SN: #UV3240Z2MRT One Maxtor hard drive SN: K60BLCTC One motherboard with bubble paper wrapped around it. Located on a brown chair in Garr's bedroom.	Sanford at 1535hrs.

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7	One cardboard box w/ a glass Distilling Apparatus Kit located in Garr's bedroom closet.	Sanford at 1541 hrs.
8	Located in Garr's bedroom on the computer stand was a 3Com SuperStack II SN: #0101/7B1V1661C38. A CPU tower dark grey/white in color, unknown make and serial number with a sticker stating MML 3 on top of the CPU. A black /silver in color Logitech G15 computer keyboard. SN: # unknown. Several computer cables.	Sanford at 1542 hrs.
9	Several Drug Paraphernalia items, such as smoking pipe with marijuana residue inside were located in Garr's bedroom on the floor.	Sanford at 1545 hrs.
10	One Cannon EOS digital Rebel XT camera located in a Sony camera bag in Garr's bedroom.	Sanford at 1546 hrs
11	A CPU tower white in color, unknown make and serial number located downstairs in the living room.	Sanford at 1550 hrs.
12	Two bags with an XBOX 360 Console w/ 2 controllers and cables white in color located in Garr's bedroom. SN: # 212988553906	Sanford at 1552 hrs.
13	Two monitors, NEC multi sync LCD 1860NX, SN: #35130560ya, and an iMac monitor, white in color, SN: #W86022CMU2P	Sanford at 1553 hrs
14	A Utility Bill located in the living room in Jon Garr's name	Sanford at 1600 hrs